

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
GTE Telephone Operating Cos. )  
GTOC Tariff No. 1 )  
GTOC Transmittal No. 1148 )  
 )

CC Docket No. 98-79

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COMMENTS OF  
LOGIX COMMUNICATIONS CORPORATION

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Logix Communications Corporation ("Logix") respectfully submits the following comments in response to petitions for reconsideration filed by MCI WorldCom, Inc. ("MCI WorldCom") and the National Association of Regulatory Utility Commissioners ("NARUC") of the *DSL Jurisdictional Order*<sup>1</sup> issued by the Commission in this proceeding.

Logix is an integrated communications provider of local, long distance, wireless, and Internet access services.

In their petitions for reconsideration, MCI WorldCom and NARUC urge the Commission on reconsideration to rescind or revise its decision in the *DSL Jurisdictional Order* to provide for greater or complete state authority over DSL service. Logix fully supports the petitions in this regard. Logix additionally offers the following comments.

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<sup>1</sup> In the Matter of GTE Telephone Operating Cos., Memorandum Opinion and Order, CC Docket No. 98-79, FCC 98-292, released October 30, 1998 ("*DSL Jurisdictional Order*"). See Public Notice, DA 98-2502, released December 4, 1998.

**I. THE COMMISSION'S JURISDICTIONAL ANALYSIS DOES NOT RECOGNIZE THAT "INFORMATION SERVICES" AND "TELECOMMUNICATIONS" ARE MUTUALLY EXCLUSIVE REGULATORY CATEGORIES UNDER THE ACT**

In its *Report to Congress*, the Commission determined that Congress established information services and telecommunications as mutually exclusive regulatory categories.<sup>2</sup> Notwithstanding that information services are provided "via telecommunications," the Commission concluded that for regulatory purposes an information service offering would be considered entirely an information service.<sup>3</sup> Thus, for example, the Commission determined in the *Report to Congress* that information service providers would not be required to contribute to universal service funding even though information services can be comprised in part of telecommunications components.<sup>4</sup>

Despite this conclusion, the Commission, in the *DSL Jurisdictional Order*, stated that "it has never found that 'telecommunications' ends where 'enhanced' information services begins."<sup>5</sup> In fact, however, it is beyond dispute that the Commission has previously determined that for *regulatory* purposes telecommunications ends where information services begins. The Commission's conclusion that under the statute telecommunications and information services are

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<sup>2</sup> Federal State Joint Board on Universal Service, Report to Congress, 13 FCC Rcd 11501, para. 39 (1998) ("*Report to Congress*").

<sup>3</sup> *Report to Congress*, paras. 40-41.

<sup>4</sup> *Report to Congress*, paras 123-130. See also *In the Matter of Federal-State Joint Board on Universal Service*, Report to Congress, CC Docket No. 96-45, 12 FCC Rcd 8776, 9180 (1997) ("*Universal Service Order*")

<sup>5</sup> *DSL Jurisdictional Order*, para. 20.

mutually exclusive regulatory categories leads inexorably to the conclusion that telecommunications ends where an information service begins.

Moreover, the Commission's determination in the *Report to Congress* that information services and telecommunications are mutually exclusive regulatory categories merely restates its longstanding regulatory treatment of information services. Under the Commission's "contamination doctrine," once a service has any information service components it becomes exclusively an information service for regulatory purposes.<sup>6</sup> The Commission's determination in the *Report to Congress* that the telecommunications components of Internet access services do not under the Act have any "legal status" separate from that of the information service<sup>7</sup> merely applies that well established doctrine. The Commission in the *DSL Jurisdictional Order* provides no reasonable basis for abandoning that policy. The Commission does not cite any cases that could reasonably be interpreted to stand for the proposition that for regulatory purposes telecommunications should be considered to extend past the point it becomes incorporated into an information service. The sole support cited is a footnote from one of the Commission's ONA orders that states that "an otherwise interstate basic service ... does not lose its character as such simply because it is being used as a component in the provision of a[n

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<sup>6</sup> As stated by the Commission: "[u]nder the 'contamination theory' developed in the course of the *Computer II* regulatory regime, [value added networks] that offer enhanced protocol processing services in conjunction with basic transmission services are treated as unregulated enhanced service providers. The enhanced component of their offerings 'contaminates' the basic component, and the entire offering is therefore considered to be enhanced." *Computer III Phase II Recon. Order*, 3 FCC Rcd at 1153, n. 23.

<sup>7</sup> *In the Matter of Federal-State Joint Board on Universal Service*, Report to Congress, CC Docket No. 96-45, FCC 98-67, released April 10, 1998, para. 79 ("Report to Congress").

enhanced] service that is not subject to Title II.”<sup>8</sup> However, in that decision the Commission was addressing BOC arguments that their monopoly provision of *telecommunications services* to information service providers should be deregulated because information services are not regulated.<sup>9</sup> It is not reasonable to assume that in finding that BOCs could not escape regulation merely by providing service to information service providers the Commission was overturning its policy that an information service provided by an information service provider will continue to be wholly non-regulated even though it is comprised in part of telecommunications service components. In fact, in that same Order, the Commission stated that the addition of enhanced service elements to a basic service “neither changes the nature of the underlying basic service *when offered by a common carrier* nor alters the carrier’s tariffing obligations..’ (emphasis added).<sup>10</sup> Read in context, the Commission was simply stating that the basic nature of the separate regulated carrier’s offering does not change or become unregulated as far as the *common carrier* is concerned just because an information service provider adds enhanced service elements to it. That determination in no way undermined the Commission’s long standing view that the service offered by the information service provider is considered to be exclusively an information service.

Logix believes, therefore, that the Commission erred in the *DSL Jurisdictional Order* to the extent it assumed or found that for regulatory purposes under the Act telecommunications

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<sup>8</sup> DSL Jurisdictional Order, para. 20 citing Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 1, 141, n. 617 (1988).

<sup>9</sup> *Id.*

<sup>10</sup> 4 FCC Rcd 1, 141, para. 274.

does not end where information service begins. On reconsideration, the Commission must reiterate its determinations in the *Report to Congress* and its long standing policy that information services and telecommunications are mutually exclusive *regulatory* categories and that, for *regulatory* purposes under the Act, telecommunications ends where information service begins.

## **II. THE COMMISSION SHOULD CLARIFY ITS JURISDICTIONAL ANALYSIS TO COMPORT WITH ITS *REPORT TO CONGRESS***

If the Commission continues to assert jurisdiction over GTE's DSL service, it must do so on grounds that are consistent with its prior statutory analysis that the regulatory treatment of telecommunications and information services differs. In its reconsideration, the Commission should make it clear that it is neither necessary for its assertion of jurisdiction over GTE's DSL service to determine that the telecommunications continues past the ISP nor is the Commission doing so. The Commission has jurisdiction under Title I - interstate communications by wire - that encompasses both telecommunications and information services.<sup>11</sup> As such, the Commission could assert jurisdiction over a communication to a distant Internet site because it constitutes an interstate communication by wire. Consistent with its prior analysis, the Commission should then determine that this interstate communication by wire is comprised of a separate mutually exclusive information service and telecommunications components and that the telecommunications component terminates at the ISP. Unlike its present analysis, this approach is consistent with the Commission's prior determinations that information services and telecommunications are mutually exclusive regulatory categories under the Act.

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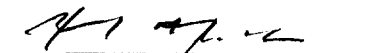
<sup>11</sup> See 47 U.S.C. Secs. 153(22) and (53).

If the Commission, however, continues to assert jurisdiction on an end-to-end analysis without recognizing the distinction between information services and telecommunications services, it must make it clear that any determination that telecommunications extends past the information service provider is only for purposes of its jurisdictional analysis and that for *regulatory* purposes under the Act information services and telecommunications services remain mutually exclusive regulatory categories. The Commission should state that for *regulatory* purposes under the Act, the telecommunications ends where the information service begins notwithstanding that combined the service may be *jurisdictionally* interstate.

#### IV. CONCLUSION

Given the unexplained and unsupported inconsistency between the *DSL Jurisdictional Order* and prior Commission decisions, the Commission should rescind or revise its Order to recognize the statutorily mandated distinction between telecommunications and information services as discussed in these comments.

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Dated: January 5, 1999

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I hereby certify that on this 5<sup>th</sup> day of January 1999, copies of the foregoing Comments of Logix Communications Corporation were served by hand delivery to the parties on the attached service list:

  
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